

Asylum in

EUROPE

Refugees



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United Nations
High Commissioner
for Refugees

C N T E N T S

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Cover: Albanian asylum-seeker arriving in the port of Brindisi, southern Italy.

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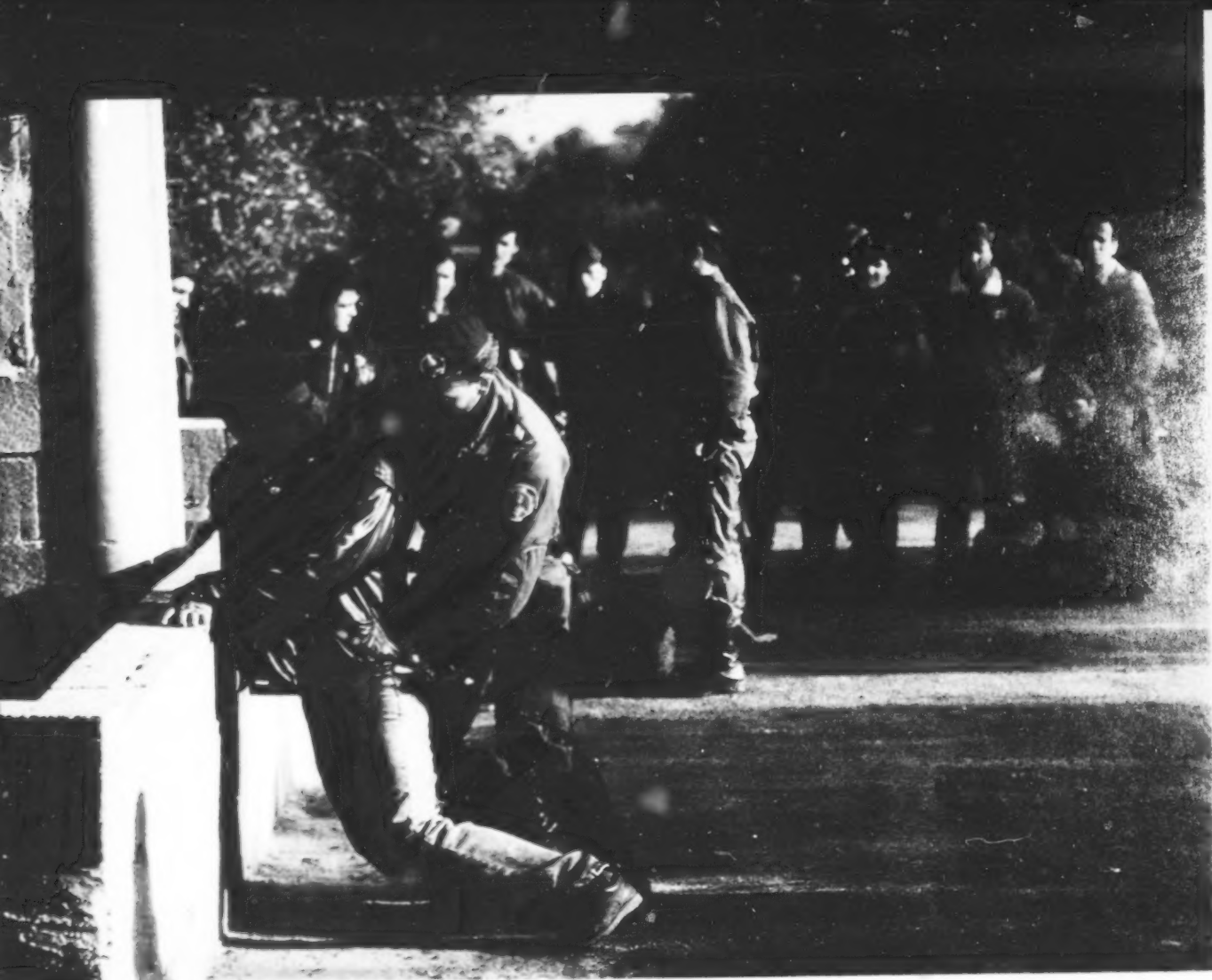
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Police checking new arrivals at Uggiano, southern Italy. The Adriatic coast is a favorite entry point for many clandestine arrivals.

Asylum under threat

It was in Europe, the land of asylum, that the 1951 Convention — the legal bible of refugee rights — was born, and along with it UNHCR, the organization tasked with ensuring it is respected.

Last year the European Union was the second largest contributor to UNHCR's annual budget, falling just short of the United States. In 1993 alone, Western European gov-

ernments spent a total of \$11.6 billion on the processing and reception of asylum-seekers.

European countries are, unquestionably, generous to refugees. But the fall of the Berlin Wall and the collapse of communism have dramatically altered the asylum landscape across the continent — to the extent that some observers fear that the basic concept of asylum is in jeopardy. Increasingly, countries are pulling in the welcome mat that has been in place for refugees since the end of World War II.

At the end of the war, everything was different. The war had wrought considerable damage and manpower was needed for rebuilding. Moreover, during the heyday of the Cold

● **Submission
of Asylum
Applications
in Europe — 1987-1994**

Country of Asylum Application	1987	1988	1989	1990	1991	1992	1993	1994
Austria	11,400	15,800	21,900	22,800	27,300	16,200	4,800	5,100
Belgium	6,000	5,100	8,100	13,000	15,200	17,700	26,900	14,400
Denmark	2,800	4,700	4,600	5,300	4,600	13,900	14,400	6,700
Finland	100	100	200	2,700	2,100	3,600	2,000	800
France	24,800	31,600	61,400	53,100	46,500	26,900	27,600	26,000
Germany	57,400	103,100	121,300	193,100	256,100	438,200	322,600	127,200
Greece	7,000	8,400	3,000	6,200	2,700	1,900	800	1,300
Italy	11,100	1,300	2,300	3,200	23,300	2,500	1,500	1,400
Netherlands	13,500	7,500	13,900	21,200	21,600	17,500	35,400	52,600
Norway	8,600	6,600	4,400	4,000	4,600	5,200	12,900	3,400
Portugal	500	400	200	100	200	700	2,100	700
Spain	2,500	3,300	2,900	8,600	8,100	11,700	12,300	12,000
Sweden	18,100	19,600	30,300	29,400	27,400	84,000	37,600	18,600
Switzerland	10,900	16,800	24,400	35,800	41,600	18,100	24,100	16,100
United Kingdom	5,900	5,700	16,800	38,200	73,400	32,300	28,000	42,200
Total	180,600	230,000	315,700	436,700	554,700	690,400	553,000	328,500

Notes All figures refer to persons.
Annual figures are rounded to the nearest 100.
The statistics for France include resettled Indo-Chinese refugees.
The 1994 statistics for the United Kingdom are provisional.
The Belgian statistics of 1990 and before refer to adults only.
Figures are subject to retrospective changes by certain countries.

► War, many European nations had strong ideological reasons for welcoming refugees.

Today, the political and socio-economic climate has changed. It has been years since growth was taken for granted. The emphasis now is on conserving what Europe has.

Today's high unemployment — 12 million people jobless in Western Europe — exacerbates a growing tendency toward xenophobia.

Although dire forecasts of a flood of millions of people from the former Soviet Union into Western Europe have not materialized, there was until recently a sharp rise in asylum requests. In the 1970s, for example, Europe counted about 30,000 asylum-seekers a year. At the end of the 1980s, the figure had climbed to 300,000. By 1992, it was up to 700,000.

The huge influx led the coun-

The European continent sees one racist attack every three minutes — and reception centers for asylum-seekers are all too often the target.

Meanwhile, Europe is once again producing refugees. With the Yugoslav crisis and the dramas unreeing across the Caucasus — in Georgia, Armenia, Azerbaijan, Chechnya — the continent of Europe now counts more than 6.5 million refugees.

"In 1990, if we had said to the Europeans that a few years later they would be sheltering more than 500,000 refugees from former Yugoslavia, no-one would have believed it," says John Horekens, director of UNHCR's Regional Bureau for Europe.

tries of the European Union to reconsider their open-door policies. In 1993, Belgium, France, Germany, the Netherlands, Portugal and Britain began taking measures to stem the flow — followed in 1994 by Denmark, Italy and Austria. Over time, these measures have become increasingly restrictive, to the point where critics say government efforts to bar economic migrants — no matter how justified — are eroding the very foundations of asylum.

Europe does not, in fact, suffer from an asylum problem. It has an immigration problem — and refugees, unhappily, pay the price. In recent years, 80 percent of the world's refugees have fled from one

poor country to another poor country. Very few have actually ended up on the doorstep of the richer nations of Europe.

UNHCR's Horekens compares the influx of refugees and of immigrants to two streams which for a long time flowed side by side, without problems. But when one stream was dammed — the immigrant stream — it overflowed into the refugee chan-

nel. The result was a flood. Since the 1970s, Western Europe's doors have progressively closed to immigration. The only entryway for people in search of better economic conditions — but who are not necessarily fleeing persecution — is to request asylum.

These economic migrants make a clever bet: that they will be able to work for as long as it takes to examine their asylum request — often, several years. At worst, after

rejection they will return home with a purse full of money and, perhaps, new skills. At best, they will be allowed to remain for humanitarian reasons. About a quarter of the 80 percent of asylum-seekers who are refused formal refugee status are given such humanitarian status, in part because it is extremely difficult to deport them. After years of deliberation, asylum-seeker families have

built new lives, developed roots, and their children have firmly integrated into the culture. "On average, the refugee status-determination procedure lasts three years," explained Jean-Francois Durieux, of UNHCR's Division of International Protection. "In the meantime, the person may have found work, a sponsor, may even have gotten married. It is not easy to deport such a person."

Thus, people are ready to pay huge sums and take big risks to at- ▶

National Front supporters in London. Anti-foreigner sentiment is on the rise in many countries.



● **Adjudication
of Asylum
Applications
in Europe — 1990-1994**

Country of Asylum Application	1990			1991			1992			1993			1994		
	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.	Acc.	Rej.	Allow.
Austria	900	11,800	—	2,500	17,200	—	2,300	21,200	—	1,200	14,200	—	700	8,300	—
Belgium	700	1,200	—	600	1,700	—	800	2,000	—	1,000	2,500	—	1,500	3,300	—
Denmark	700	—	1,400	1,000	—	2,000	800	—	2,000	700	—	2,100	500	—	1,400
Finland	20	300	100	20	600	1,700	10	1,300	600	10	1,400	2,100	20	500	300
France	13,500	74,500	—	16,000	65,800	—	10,800	27,600	—	9,900	25,600	—	6,200	23,800	—
Germany	6,500	116,300	—	11,600	128,800	—	9,200	163,600	—	16,400	348,000	—	25,600	238,400	—
Greece	200	2,300	—	120	5,200	—	100	1,700	—	40	700	—	90	700	—
Italy	800	600	—	800	15,700	—	300	6,600	—	100	1,300	—	300	1,400	—
Netherlands	700	9,000	900	800	14,500	1,900	4,900	20,300	6,900	10,300	15,800	4,700	6,700	32,200	12,700
Norway	100	2,100	1,200	100	2,300	1,700	60	2,900	1,000	50	4,700	500	20	3,000	1,800
Portugal	40	50	—	10	50	—	20	0	—	40	600	—	10	1,700	40
Spain	400	3,000	—	200	5,500	—	500	10,600	—	1,300	16,300	—	600	12,200	—
Sweden	2,200	4,500	9,200	1,400	4,300	15,500	600	8,200	8,800	1,100	41,400	34,700	800	10,300	36,600
Switzerland	600	11,200	—	900	28,500	—	1,500	30,100	—	3,800	18,700	—	2,900	18,800	—
United Kingdom	1,600	900	3,600	800	5,400	3,000	1,900	35,500	21,700	2,900	18,600	15,500	1,400	20,900	5,400
Total	29,000	238,000	16,000	37,000	296,000	26,000	34,000	332,000	41,000	49,000	510,000	60,000	47,000	376,000	58,000

Notes

— Not applicable / not available

Acc. Accepted as Convention refugee

Rej. Rejected

Allow. Allowed to stay for humanitarian or similar reasons

Annual combined totals of all listed countries have been rounded to the nearest 1,000

All other figures have been rounded to the nearest 100, except for figures under 100 which have been rounded to the nearest 10

The figures for Denmark and France include resettled refugees

The 1991 figures for Italy are provisional; they concern mostly Albanians

Figures are subject to retrospective changes by certain countries

tain their dream of a better life, including job opportunities and the possibility of a decent education for their children. Television and modern communications have transcended international borders, giving rise to new frustrations, desires and anger among the have-nots. One result is human smuggling, an enterprise that has attracted organized crime networks and generated untold misery and tragedy (see page 26). Smuggling rings operate in and through several regions: Albania is

ens. "Industrialized countries should be investing more in the poorer nations so these people find what they are looking for in their own countries. But in the meantime, we need to recognize that people looking for economic security do not fall under UNHCR's mandate. We should have the courage to do this, and to agree that it is up to the countries concerned whether to send illegal immigrants back."

But for many governments, ever mindful of public opinion, such ac-

the preferred route for Macedonians, Kurds, Pakistanis and Chinese; Hungary for Kosovars; the Baltic countries for Iraqis, Afghans and Sri Lankans. Some migrants are financially ruined. Others risk — and even lose — their lives in pursuit of their dream.

There is no doubt that Europe has in recent years witnessed a sizeable wave of false asylum claims and that governments needed to do something to stem the flow.

"We can sympathize with people who flee disastrous economic conditions in an attempt to find a better future for their children," says Horek-

tion is easier said than done.

Says Horekens, "The greatest danger to asylum in Europe is the increase in the number of asylum requests from people who are not refugees, and whom governments dare not deport because of public sympathy or fear of a backlash from the press, public opinion, or non-governmental organizations."

Attempts to deport rejected asylum-seekers are often in vain. A decision in July by French authorities to deport a group of 51 Romanians, after agreement with Romanian authorities, raised a flurry of protest from non-governmental or-

ganizations. There was a similar reaction when France, Belgium, Germany and the Netherlands deported a total of 60 Zairians during the same period. Like the Romanians, the Zairians had never requested asylum. No refugee was among them. But the conditions of their departure raised indignation.

"Though it may be painful, it is our job, among other things, to support governments who decide to deport people who claim to be refugees but who are not," Horekens said. "But only if certain conditions are fulfilled — including that these people must have had full access to internationally accepted asylum procedures. This is far from being the case everywhere.

"We need to be absolutely sure that they are not refugees," he continued. "If governments are ready to put a real effort into improving the quality and impartiality of their status-determination procedures, then we are ready to make an effort to support them concerning the other cases. Our responsibility is to ensure that there are doors open to permit refugees to get in."

Several of the measures adopted by various European countries have contributed to clarifying a murky situation. But in places, they are applied with such severity that they may violate the right of every individual to seek refuge and protection in another country when life or freedom are in danger at home.

To reduce the often long delay between the actual asylum claim and the response of state authorities, an increasing number of European countries are adopting accelerated status-determination procedures. However, in certain cases these procedures are so accelerated that an asylum-seeker does not get an adequate hearing. And those who must adjudicate the case don't always have the necessary qualifications.

Accelerated procedures have allowed Belgium to considerably reduce its flow of illegal migrants: 90 percent of asylum requests are now rejected at the border. Barely three years ago, Belgian transit centers

overflowed with asylum-seekers and new ones had to be opened constantly. Today, they are closing, one after the other. But access to the eligibility procedure has become so difficult in Belgium that it is discouraging even true refugees. They feel they have no chance for success — and prefer to enter the country clandestinely.

France has the highest refugee recognition rate in Europe — 25 percent compared to an average of 10 percent elsewhere. But the problem is getting across the border in the first place. French police have the reputation of being the deafest in

While few can argue
about the need to harmonize,
the resulting policies have tended toward
the lowest common denominator.

the European Union. Two-thirds of asylum-seekers never make it across the frontier.

In addition, the creation of the European Union has pushed member states to harmonize their asylum procedures. While few can argue about the need to harmonize, the resulting policies have tended toward the lowest common denominator.

"With the gradual removal of formalities within the European Union, it was quite natural for them to harmonize their asylum policies," Horekens said. "It's normal that an open Europe should want to exercise control over its external borders. As such, harmonization measures pose no problem — just like accelerated status-determination procedures — but on the condition that they be harmonized at a level that is acceptable. This is not necessarily the case."

The crux of the problem is that each E.U. country is trying to be stricter than its neighbor, to receive as few false asylum requests as possible. The example of the Netherlands is particularly significant. For years, the Netherlands, like Scandinavia, was considered a model of

liberty, generosity and flexibility. But how can a country remain generous when its neighbors persist in closing their doors? In the tight little world of asylum-seekers, word of mouth functions very well. News of government measures spreads quickly — as do ways to bypass them. Asylum-seekers know which countries have the most liberal policies, and they gravitate toward them. In the Netherlands, for example, asylum requests doubled between 1992 and 1993 as other European countries began erecting barriers. Requests rose again by 51 percent in 1994. Unwilling to welcome all the asylum-seekers who were now being refused elsewhere, Holland finally adopted its own new legislation in January 1995.

Little by little, the countries of Europe have raised the walls of their fortress, and they continue to seek new ways of keeping false asylum-seekers away from their borders. Unfortunately, these same measures could also deny access to genuine refugees.

First came the imposition of visa requirements for people from countries likely to produce refugees, in ▶

One can only imagine the obstacles
someone from war-torn Bosnia
must overcome to obtain a visa to anywhere.

► cluding former Yugoslavia, Romania, Iraq or Sri Lanka. One can only imagine the obstacles someone from war-torn Bosnia-Herzegovina must overcome to obtain a visa to anywhere.

Then came sanctions and fines imposed on airlines that accept passengers without the proper travel documents. Airline employees lack the proper qualifications to determine who does, or does not, need international protection. In some countries, particularly in the Third World, European immigration officers are posted at airports to check the identity and documents of travelers before they even board Europe-bound planes.

Then came the notion of the so-called "safe third country," in which governments refuse even to examine the asylum request of someone who has previously transited a country considered to be "safe" (see page 11). The asylum-seeker is simply returned to the "safe" transit country. "For this concept to work, from UNHCR's perspective, you have to be able to prove that this person would indeed have access to proper asylum procedures and protection in the country to which he or she is being returned," said Michael Petersen, UNHCR's regional legal adviser for Europe. "Unfortunately, this is not always the case."

In Germany, for example, any person who has transited through a

country considered safe has no right to asylum. He or she is sent back to that country. The list of these "safe countries" includes all of those bordering Germany. Some of them are East European nations that have only recently signed the 1951 Convention and which are still learning — and making mistakes — about refugee rights. The German list also includes the countries of the European Union — including Greece and Austria, despite UNHCR's reservations. And the concept of a safe third country is applied even to people who have only briefly transited a foreign airport.

Greece admits only asylum-seekers who arrive directly from their countries of origin. Those who have transited through another country are sent back. This can mean disaster for some asylum-seekers who pass through Turkey, for example. Although Turkey ratified the 1951 Convention, it did so with a geographic reservation, stipulating that only refugees from European countries can claim asylum. Others need not apply.

"A number of Iranian refugees who cannot flee by plane — Iranian airports are particularly well-patrolled — cross illegally into Turkey," said Henrik Nordentoft, of UNHCR's Division of International Protection. "Many seek to move onwards to Western European countries, fearing that the Turkish authorities will not guarantee their protection. Those

who approach the authorities in Greece are refused asylum because they have not come directly from Iran. Greece may seek to deport them back to Turkey, which, however, has no obligations toward Iranian refugees under the 1951 Convention. Such situations, where there is no agreement among the countries about who should be responsible for the protection of the refugees, pose a serious threat to the safety of refugees."

In the same spirit, European countries have established the notion of "safe country of origin" — an idea which also presents dangers when applied blindly, without discretion. France recently classified Romania as a safe country of origin, but added that — given concerns about minority rights in the country — Romanian asylum-seekers would not necessarily be deprived of the right to be recognized as refugees.

There is also the "non-suspensory effect," in which a rejected asylum seeker who appeals the decision cannot remain in the country pending the appeal. Countries like A



Asylum in EUROPE



Watched by an officer of the German Federal Border Protection Police, Romanians, mostly Sinti and Roma, are returned to Romania. There are almost daily flights to Bucharest from Berlin's Schönefeld Airport under an agreement between the two governments.

tria, France, Sweden and Germany apply this notion in some cases. But where can a refugees go, when their lives are in danger and they cannot return to their country? Often, they choose to remain illegally, waiting for the appeal. But, if detected, they can be imprisoned.

Many countries have opened what they term "transit zones" to receive asylum-seekers (see page 22). Critics say they are, in reality, detention centers. In Britain and elsewhere, some asylum-seekers have been in detention for more than a year. Some have committed suicide. "Asylum-seekers are not *prima facie* criminals," declared Petersen. "There is no reason to treat them as criminals. Some already experienced enough trauma."

Even more worrisome is a restrictive interpretation by some European countries of the 1951 Convention, in which only those who fear persecution by a state are entitled to refugee status (see page 16). According to this notion, victims of persecution by *non-state agents* — rebel groups or extremist organizations, for example

— have no right to refugee status. For example, people targeted by an Algerian extremist group are not considered to be refugees in certain European countries — France and Switzerland among them. However, members of this same extremist organization may be eligible for refugee status if they fear persecution from state authorities and have not been implicated in any terrorist act.

Elsewhere, the application of the non-state-agent notion to people from former Yugoslavia has meant that Kosovo Albanians can be recognized as refugees, but not Bosnians who flee a far more imminent threat to their lives.

Moreover, victims of generalized violence, civil war and human rights abuse are often refused refugee status on the grounds that they do not face an individual threat from the state. Thus, Liberians fleeing five years of vicious civil war can be denied refugee status. So can Bosnians — who are often considered by UNHCR to be textbook examples of the 1951 Convention definition. Austria is the only country in Western Eu-

rope to deport Bosnians — via Hungary, where many manage to escape. Austria deported 43 Bosnians in this way last year, in direct violation of Article 33 of the 1951 Convention, on non-refoulement.

To some observers, European governments appear to want to have it both ways — they are more than willing to provide financial support for programs aiding refugees and displaced within the confines of former Yugoslavia, for example, but are much less receptive when victims of the war manage to turn up on their doorstep. "This position taken by European governments puts UNHCR in a dilemma," Cecil Kpenou, UNHCR Representative to the European Union in Brussels, said. "On the one hand, they're asking UNHCR to give assistance and protection to victims of conflict, with the complete political support of European funding countries. But, on the other hand, when these same victims of conflict attain the territory of the countries of the European Union, the response is completely different: the people under UNHCR protection are all of a sudden no longer recognized as refugees."

To UNHCR, refusing refugee status to people who have been, or who fear to be, persecuted by agents other than their own government is contrary to the 1951 Convention. "Persecution which does not involve state complicity is still persecution." ▶

► explains Petersen. "The Convention applies when the state is unable to protect such people."

In the defense of those governments who do refuse refugee status to these people — essentially because they fear they will remain indefinitely — various formulae have been found that allow these people to stay until it is safe to go home. These include "temporary protection" for hundreds of thousands of Bosnians, as well as the provision of "humanitarian status," "tolerated status," and "exceptional right to remain."

"UNHCR has no problem with these different legal statuses," noted Horekens, "so long as the beneficiaries are protected against the great-

are not always there, nor is the humanitarian assistance available inside some countries. And to find refuge within his borders, a refugee should not have to cross a front line at the risk of being shot. In addition, a refugee is not necessarily safe in a neighboring country."

Dennis McNamara, director of UNHCR's Division of International Protection, agrees that in their eagerness to bar illegal immigrants, West European governments are weaving a net so tight that legitimate refugees may not be able to get through. "Nobody — not a single politician — is saying that there is a difference between a refugee and someone who is an illegal migrant," McNamara says. "Nobody acknowledges that there are actually very few refugees knocking at their door and that they should be making every effort to find places for them. Instead, they're all being lumped together."

This overreaction is a major concern of UNHCR. "Let's not exaggerate — let's keep it in perspective," McNamara cautioned. "With 300,000 asylum-seekers per year in Europe, most of whom are not refugees, the figures aren't that high. This situation could be managed easily — without panic — if there was the political will to do so."

Today, Europe is at a crossroads. If it was in Europe that asylum was born, it is also in Europe that the principle is now most menaced. Will the warning be heard? If not, the consequences will be felt not just in the region, but worldwide. How can poor countries be convinced to accept refugees if the richest nations close their doors to the few still knocking? One thing is certain: If Europe sets the example, the rest of the world will follow.

"We hope our point of view will triumph," said Kpenou. "Any restriction of the definition of a refugee by the states of Western Europe will manifestly influence the decisions and the good will of countries in Africa and Latin America, who until now have been so generous."

CHRISTIANE BERTHAUME

Nobody — not a single politician — is saying
that there is a difference
between a refugee and
someone who is an illegal immigrant.

est danger — refoulement to their countries of origin, where their lives would be in danger. But unfortunately, the associated legal and social rights afforded these people vary widely from country to country, and are often far less generous than those given to recognized refugees. That is a gap that needs filling."

European governments are also examining concepts like the "internal flight alternative" and "regionalization." Under the first, someone who fears persecution should first try to find refuge in a safe area of his or her own country. Failing that, the asylum-seeker should remain within the geographical region on the pretext that a more familiar cultural environment is less traumatic. At face value, these alternatives may not appear to pose major problems. But they cannot be applied in every case.

"These solutions may be valid in some cases," says Petersen. "But they cannot be applied systematically for everyone. The security conditions

Protection *of, or protection from, refugees?*

Ever since the number of asylum-seekers in Western Europe began to climb in the late 1980s, burden-sharing has been a frequent item on the political agenda. But in the absence of a workable system for distributing asylum-seekers and for sharing the accompanying costs among countries in the region, governments have turned to a more convenient approach — the application of safe third country rules.

According to this notion, asylum-seekers should not have the luxury of choosing the country where they will ask for asylum. Rather, they should ask for protection in the first country they reach where this would be possible. Countries which apply the safe third country rule deny asylum-seekers access to a substantive refugee status-determination procedure on the grounds that they could have, or should have, requested asylum elsewhere.

Thus, the Iraqi Kurd who makes his way via the Jordanian capital of Amman to Moscow, then travels overland through Latvia and then by boat from the port of Riga to Sweden, is sent back to Latvia. A Kosovo Albanian woman who crosses Hungary and Austria and presents herself to German border guards asking for asylum is denied entry, even though she is seven months pregnant, accompanied by two small children, and her husband is already in Germany. A group of Tamils from Sri Lanka who travel by air via Abu Dhabi and Rome to Vienna are re-

turned from Vienna to Rome, and then sent onward from Rome to Abu Dhabi. The configurations are endless; the human drama is nowhere recorded.

It is widely recognized that the safe third country notion (also referred to as "safe host country" or as "protection elsewhere") can be a useful procedural tool to enable states to handle asylum procedures expeditiously. However, if it is applied without adequate procedural safeguards there is a risk of chain deportations in which each country — without looking into the merits of the individual claim — passes the asylum-seeker back to the last country through which he or she traveled. The reverse journey may end in a country which does not afford sufficient protection to refugees or, worse, in the country of origin.

Democratization in Central Europe and the emergence of a general perception of the region as "safe" for refugees gave Western European governments a strong incentive for formalizing policies regarding safe third countries. On 30 November 1992, the ministers responsible for immigration in what was then the European Community adopted a "Resolution On A Harmonized Approach to Questions Concerning Host Third Countries." This was intended to establish objective criteria for applying the safe third country principle. According to the resolution, "if there is a host third country, the application for refugee status may not be examined and the asy- ▶

► lum applicant may be sent to that country."

However, since adoption of the resolution, there has been considerable disagreement both on how to determine if a country meets the criteria for being a safe third country, and on when the concept should be applied. Should a Zairian woman whose husband is an asylum-seeker in Belgium but whose flight landed in Rome en route to Brussels be returned to Italy? Which state should be responsible for the 17-year-old Liberian girl who flies from Ghana to Bulgaria, and then travels to Germany overland through Serbia, Hungary, Slovakia and the Czech Republic? Should Poland be considered a "safe" third country, even though there are persistent reports that certain groups of asylum-seekers — Armenians, for example — have difficulty getting access to the asylum procedure there?

Germany has Europe's most far-reaching safe third country rule. Although Article 16(a) of Germany's Basic Law, or constitution, still affirms that "politically persecuted enjoy the right to asylum," the next paragraph excludes from the right to asylum all persons who enter Germany from a "safe" country, defined as one where application of the 1951 Convention relating to the status of refugees and the European Human Rights Convention is assured. All countries having land borders with Germany are thus deemed "safe" with the result that no asylum-seeker entering Germany overland after 1 July 1993 should have access to protection in Germany. Although in practice it has not been possible to apply this rule as stringently as was intended, either because asylum-seekers purport not to know through which country they traveled or because neighboring countries refuse to readmit them, the rule still has the potential to change the asylum landscape in Europe.

The European Council on Refugees and Exiles (ECRE), in its February 1995 publication titled "Safe Third Countries: Myths and Realities," warns that "by introducing various

and varying categories of 'second' and 'third' 'responsible' host countries, states have actually increased, rather than reduced, the incidence of 'refugees in orbit' — those who end up in limbo, shunted from one country to another without access to proper status determination."

Under general international law, states are only obliged to readmit their own nationals. To facilitate the return of asylum-seekers to countries through which they have traveled, Western and Central European states are increasingly concluding readmission agreements which apply to third-country nationals as well. Yet, with the exception of returns in the framework of multilateral agreements like the Schengen Agreement and the Dublin Convention (the latter is not yet in force), there is no guarantee that the individual will have access to an asylum procedure. The readmitting state is generally not informed that the person it is being asked to take back is an asylum-seeker, nor of the fact that his or her claim has not been examined on its merits by the sending state.

UNHCR was disappointed that member states of the European Union did not agree to include even a modest safeguard in the "Standard Bilateral Readmission Agreement," the text of which the E.U. Ministers of Justice and Home Affairs adopted at their meeting on 1 December 1994. Such agreements are intended, among other things, to allow the transfer of asylum-seekers to third countries, but lack provision that an asylum claim will be examined on its merits in the third country.

Formal agreement among states about the responsibility for handling asylum requests would reduce the number of asylum-seekers in orbit and discourage misuse of asylum procedures. The Dublin Convention and the Schengen Agreement are a step in the right direction because they address questions of readmission of asylum-seekers and competence for examining an asylum request. However, the first months' experience with the Schengen Agreement demonstrates that even

among parties to that accord, it is difficult to reach agreement on responsibility for asylum claims. According to the German Interior Ministry, of 511 requests to readmit asylum-seekers addressed to Germany by France and the Netherlands in the first three months of application of the Schengen Agreement (March-June 1995), Germany rejected 53 percent, accepted 12 percent, and (at the end of June) was still studying the remainder.

Meanwhile, the network of bilateral readmission agreements grows ever more dense. A 1994 compilation prepared by the Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia lists 30 separate bilateral readmission agreements involving Western and Central European states, or between Central European states. Although not all extend to the readmission of third country nationals, most do so. None contains any specific assurances regarding protection of asylum-seekers.

It is clear that the asylum scene in Europe, previously divided into East and West, is now characterized by a three-way division: the traditional asylum states of Western Europe; a new Central European buffer zone; and the turbulent region of the former Soviet Union and the Balkan states. Although asylum-seekers are increasingly being returned to countries in Central Europe which have been deemed "safe," the number of persons who apply for asylum in these countries remains very low.

There are many reasons why asylum-seekers do not ask for protection in the first country in which this might be possible. Varying levels of material assistance and varying standards of protection are part of the explanation. As far as Central Europe is concerned, most asylum-seekers do not yet perceive this as an asylum region, and many try again and again to make their way to Western European countries. Sometimes, asylum-seekers are unable to gain access to asylum procedures, even in countries deemed "safe."

In an effort to remove the element of uncertainty for the asylum-seeker, and to offer a fundamental safeguard, UNHCR has recommended that the consent of the third state be secured before an applicant for asylum is sent there, and that assurances be obtained that he or she will be admitted to an asylum procedure. It would also be important — especially with regard to the "new" asylum states — to inform the individual of the possibility to apply for asylum. Ironically, it is precisely this element of uncertainty which some governments see as a useful deterrent factor. In a report on asylum in Germany presented to the German Parliament on 20 June 1995, German Interior Minister Manfred

the "safety" of Greece and the Czech Republic have been questioned. In the United Kingdom, the "safety" of Germany, France, Austria and Greece as countries of asylum have been subject to scrutiny.

It is likely, however, that safe third country rules are here to stay, in one form or another. Four steps would go a long way toward making them more palatable, from both the legal and humanitarian viewpoints.

- Firstly, the applicant should be able to challenge — in an individual procedure — the presumption that he or she could find safety in the third country.
- Secondly, the receiving state

Sometimes asylum-seekers are unable to gain access to asylum procedures, even in countries deemed safe.

Kanther said: "Certainty has yielded to uncertainty. The mere possibility of being immediately sent back (to the third country) has raised the stakes for those who might embark — without the necessary entry documents — on the costly journey to the Federal Republic of Germany."

While the German government credits the safe third country rule, together with other changes in German asylum legislation, with having brought the number of asylum-seekers in Germany down from a record high of 438,191 in 1992 to 127,210 in 1994, the safe third country rule is coming under increasing judicial scrutiny in Germany and elsewhere. Germany's highest court is expected to rule soon on the constitutionality of the safe third country rule introduced into the German Basic Law in mid-1993. The court challenge comes in the context of cases where

should be informed that the individual being sent back is an asylum-seeker, and its consent to admit him or her to an asylum procedure should be secured.

- Thirdly, the individual should be informed of the possibility to apply for asylum in the country concerned and of the procedure to follow.
- Lastly, asylum-seekers should not be made subject to safe third country rules if they have compelling reasons for being exempted from them, such as an urgent medical condition or close family ties in the destination state.

These simple steps would be a signal that protection of refugees, and not protection *from* refugees, remains the overriding concern of states.

JUDITH KUMIN



◀ Displaced people from Srebrenica receive bread from UNPROFOR troops at Tuzla airport.

An elderly Croatian Serb refugee from Krajina entering Serbia at the Sremska Raca border crossing.



▲ More than 100,000 Croatian Serb refugees from the Krajina region made the tortuous journey by road across northern Bosnia to seek refuge in the Federal Republic of Yugoslavia. Here, a mother and child wait at the Sremska Raca border crossing.

Summer of sadness

Another summer of war caused untold misery and forced at least 350,000 more people to flee their homes in former Yugoslavia between July and mid-September. They joined the more than 3.6 million people already displaced within the region, and at least 500,000 others scattered across Europe. In all, more than 3.5 million people are now receiving some kind of assistance in former Yugoslavia through the UN-HCR-led humanitarian aid program.

Displaced Bosnian Muslims from Srebrenica queue for aid at the Tuzla airport camp.



Thousands of Croatian Serb refugees at the Bijeljina railway station in northeast Bosnia on their way to Serbia.



The large-scale movements began in early July when Bosnian Serb forces overran the government enclaves of Srebrenica and Zepa and expelled all of their residents. Many atrocities were reported. Some 36,000 people eventually made it to government territory around Tuzla and Zenica, where UNHCR, UNPROFOR, various NGOs and local authorities provided assistance. But, by mid-September, thousands of men from Srebrenica remained unaccounted for.

In late July, Bosnian Croat and Croatian forces captured the Bosnian Serb-held towns of Glamoc and Grahovo, forcing some 14,000 people to flee to other areas of northern Bosnia. Again, UNHCR and other agencies were on hand to help.

On the morning of 4 August, the Croatian army launched an attack that eventually forced more than 180,000 Croatian Serbs to flee their homes in the Krajina region in the war's largest single exodus. Nearly all of them fled across northern Bosnia to the Federal Republic of Yugoslavia. UNHCR launched an emergency airlift to Belgrade and sent more convoys to Serbia to help the tens of thousands of new arrivals.

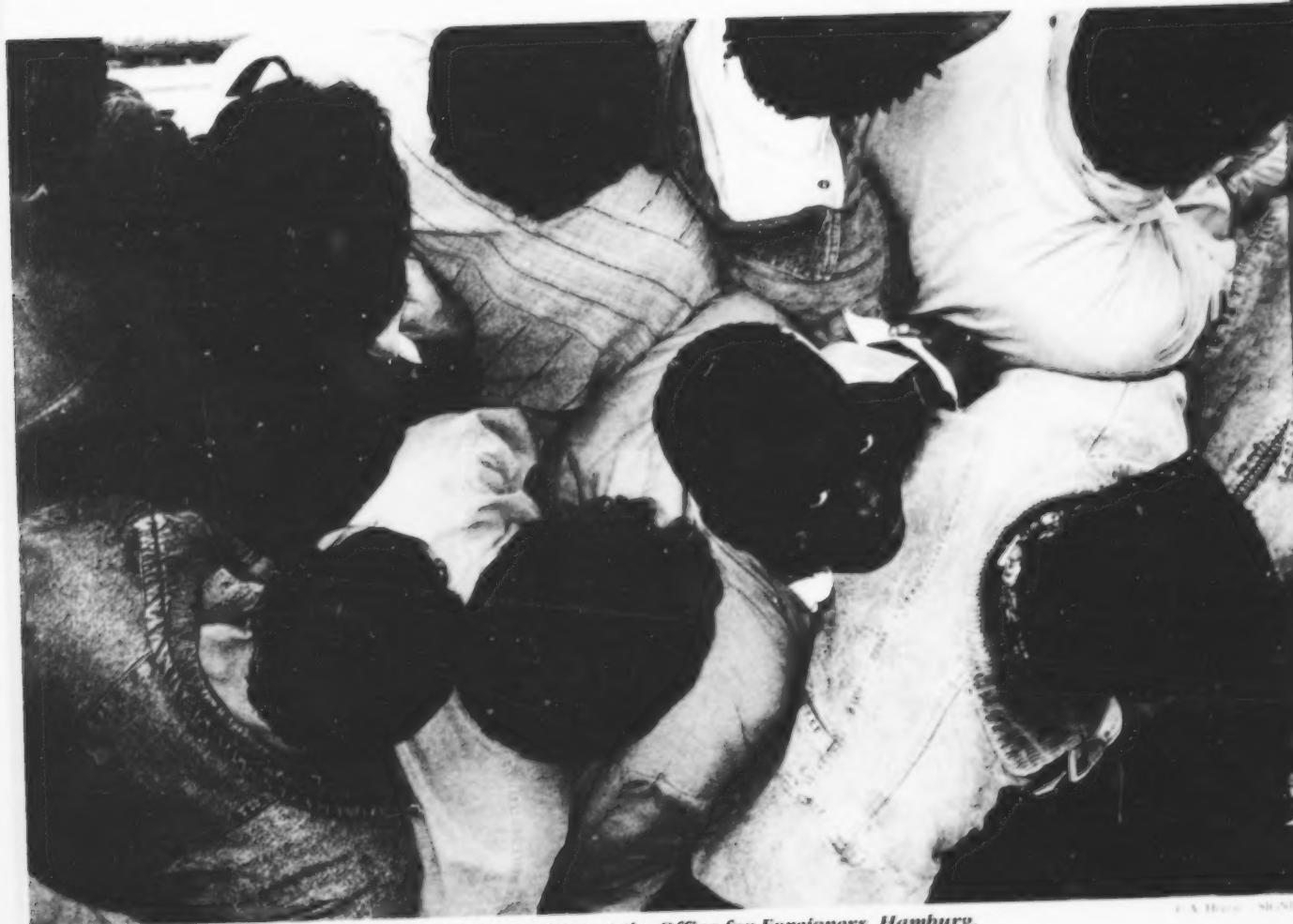
In mid-September, an estimated 100,000 more Bosnian Serbs were displaced by fighting in northwest Bosnia. They fled toward the city of Banja Luka, where some 20,000 minority Muslims and Croats were expelled in August and September.



Displaced children receive food aid at Tuzla airport.



UNHCR / E. Devereux



Asylum-seekers from various countries waiting at the Office for Foreigners, Hamburg.

Persecution complex

In January 1993, a 29-year-old Liberian named Thomas arrived in Germany with his wife. Back home, his father had been killed by one of the largest of the armed factions which have been tearing Liberia apart since the government collapsed in 1990. Shortly afterwards, Thomas was forcibly recruited by the same faction. Subsequently, suspected of spying for a rival group, he was made to watch as his wife was raped. As another test of his loyalty, he was forced to kill a number of children who had also been accused of spying. Fearing their days were numbered, Thomas and his wife managed to stow away on a cargo ship which took them to Italy. They then traveled by

car to Germany, where they applied for asylum.

Their experiences would appear to qualify them as refugees. Or so one might think, given the very reasonable fears they expressed for their personal safety and the fact that, by 1993, the system of "national protection" — a functioning police force and judicial system — was extinct in Liberia. Unfortunately for Thomas and his wife, in several European countries, including Germany, it is who you fear may persecute you that matters — rather than what they may do to you.

Even though the grotesque series of events that led to their flight was not disputed, in September 1993 the German Federal Office for the Recognition of Foreign Refugees rejected Thomas' and his wife's asylum claims as "manifestly unfounded." This despite the fact that they were manifestly in danger if forced to return to their home country. Their current whereabouts are unknown. Like many other asylum-seekers from states in disarray, they are victims of a highly contentious interpretation of the refugee definition contained in the 1951 Convention Relating to the Status of Refugees.

Thomas's big mistake was to be persecuted by a faction rather than by official state authorities such as the army or secret police. An Iranian or a Libyan facing several years in jail for printing political pamphlets critical of the government would — quite rightly — probably be recognized as a refugee by every European country, under the 1951 Convention. However, in Germany, France, Italy, Norway, Sweden and Switzerland, many people with a genuine fear of being specifically targeted by "non-state agents" — in other words, by groups or organizations that are not controlled by their country's government, or in countries that do not have a functioning government — do not normally qualify for refugee status and risk being sent back to situations of extreme danger.

Because Thomas' and his wife's persecutors were not part of a government force, but belonged to a

faction in a country without a functioning government, the couple somehow, according to some European countries, cease to be victims of persecution and therefore fail to qualify as refugees.

This situation may get even worse. If ongoing efforts by the 15 member states of the European Union to harmonize their interpretation of the refugee definition finally settle on the lowest common denominator — as many people fear may happen — a Liberian like Thomas will not just have fled to the wrong country but to the wrong continent.

The problem lies in an extremely restrictive interpretation by the above-named asylum countries of the word "persecuted" in Article 1A of the 1951 Convention Relating to the Status of Refugees. Persecution, according to the restrictive interpretation, can only be carried out by a government or — a recent concession in some asylum countries — by some other "state-like" authority. In

In several European countries,
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addition, some countries grant refugee status if they feel the state was actively unwilling — rather than unable — to prevent persecution by a non-state agent.

In parts of Liberia or Somalia, however, warring clans, factions and sub-factions have been operating in situations close to anarchy rather than running identifiable, if unofficial, statelets with functioning administrations. As a result, despite the fact that some 150,000 Liberians are estimated to have been killed since 1989, in Germany only one Liberian was recognized as a refugee in 1994 while 1,850 were rejected. During the same year, over 8,771 Turks — mainly Kurds — were accepted and 23,683 rejected. A 21 percent recog-

nition rate for Turks against a 0.05 percent rate for Liberians.

In Switzerland, the statistics show a similar pattern. In 1994, a total of 143 Liberians asylum-seekers were rejected and none accepted (0 percent recognition rate); 314 Algerians were rejected and none accepted (0 percent recognition); two Angolans out of 854 were accepted, the rest rejected (0.2 percent recognition). Yet in the same year, 654 Turks — again, mainly Kurds — were accepted and 631 rejected (51 percent recognition). And 32 Pakistanis were accepted, while 330 were rejected (10 percent recognition).

The statistics, of course, do not tell the whole story. Even if the most liberal interpretation of the 1951 ►

► Convention were applied, not all Algerians who applied for asylum in Switzerland would qualify as refugees because of a genuine fear of persecution at the hands of state or non-state agents. Nevertheless, the situation in Algeria is sufficiently grave, with thousands killed over the past three years — many as a result of individual targeting — to create an expectation of an acceptance rate somewhat higher than 0 percent. In 1994, the civil wars in Liberia and Angola were among the most murderous on the planet.

In France, the Refugee Appeals Commission has recognized a few Liberians and Afghans on the grounds that they were the victims of persecution by factions which held *de facto*, state-like authority in given regions, or because *de facto* authority was shared by two different factions, which meant that the asylum-seekers in question could not

his home and killed two of his brothers. After this, Mohammed fled the country and made his way to France.

His case was rejected by the Refugee Appeals Commission on the grounds that the clans and sub-clans in Somalia, although fighting to create or extend "zones of influence," had failed to reach the point where by they exercised enough "organized" control to be considered *de facto* authorities. The Commission did not consider whether or not Mohammed's fears for his personal safety were justified. As was the case with Thomas, the focus was entirely on the status of the persecutor. If the persecutor does not pass muster, the possible fate of the persecuted is considered irrelevant. And when it comes to warring clans and factions, their status appears to be dependent on the eye of the beholder.

Thus in Germany, many administrative courts now recognize per-

and Switzerland has not recognized any Algerians at all.

Clearly, the patchwork of different practices by European states could do with some harmonizing. But harmonization down to the level of the lowest common denominator could lead to wholesale, continent-wide rejection of large numbers of people in clear need of protection; no recognition, anywhere in the European Union, for any Liberian, Somali, Angolan or any of the Algerian social groups (such as journalists, magistrates, teachers, intellectuals) who have been consistently targeted by extremist groups.

The European Council on Refugees and Exiles (ECRE) is a forum of non-governmental organizations in Europe. Its General Secretary, Philip Rudge, said, "The realities of the time are that we are, sadly, receiving people fleeing from many sources of persecution, not just states. In their efforts to achieve harmonization in their interpretation of Article 1, European countries should take note of the tragic realities. The human issue is the most important: is a person being persecuted? Does he or she need protection?"

Nowhere does the definition contained in the 1951 Convention — which was cited in support of the French Refugee Appeals Commission's rejection of Mohammed — say or even hint that only states or state-like authorities can persecute. To qualify as a refugee, a person must:

- be outside his own country;
- have "a well-founded fear of being persecuted" for one of a given set of reasons;
- be "unable or, owing to such fear, unwilling to avail himself of the protection" of his country of origin.

The identity of the persecutor is not discussed. Clearly, if no state or state-like authority exists, the person fearing persecution is "unable... to avail himself" of any form of national protection.

Yet courts in several European countries have got into the habit of totally ignoring the victims' predicament while constructing labyrinthine

Nowhere does the definition contained in the 1951 Convention say or even hint that only states or state-like authorities can persecute.

seek protection from the "public authorities."

However, Somalis have been systematically rejected by the French Commission. The reasoning given for the rejection of a Somali asylum-seeker in 1993 illustrates the French interpretation of the Convention on the non-state agent issue. The asylum-seeker in question, Mohammed, had been a mechanic in the army of the deposed president, Siad Barre. In 1991, after the president fled and the country splintered into an all-out civil war, one of the largest sub-clans wanted Mohammed to maintain its armed vehicles. Mohammed refused because he didn't want to take part in a war he considered to be fratricidal. On 10 October 1991, members of the sub-clan arrived at

secution of Bosnian Muslims by "state-like agents" — Bosnian Serb authorities or militias. However, they do not in the case of Liberians and Somalis. France recognizes it in the case of some Liberians and Afghans, but not in the case of Somalis, because Somali factions are deemed to be less organized. Switzerland recognizes some Afghans and a few Somalis as victims of state-like persecution, but apparently not Liberians or Angolans. France has not recognized any victims of non-state persecution in Algeria, except a handful of cases in which the state has been judged unwilling (as opposed to unable) to protect certain individuals. Germany has only recognized Algerians who have been victims of persecution by the state,

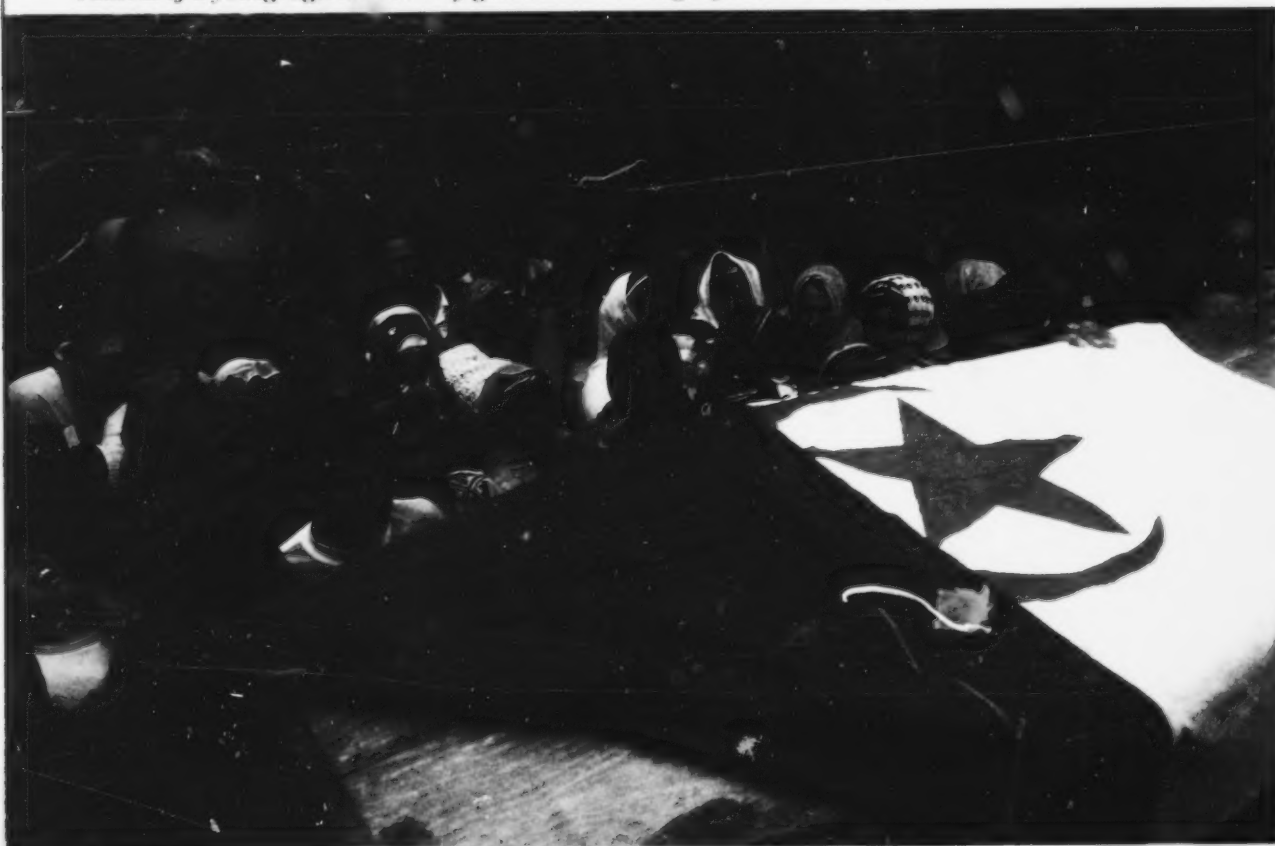
legal arguments over the status of states and factions, using logic which even Orwell and Kafka would have had difficulty dreaming up. As UNHCR's Director of International Protection, Dennis McNamara, points out, "the restrictive interpretation can give rise to situations whereby someone who defects from an armed opposition group, but is still identified with it by his government, can be recognized as a refugee under the 1951 Convention. However, innocent people — women, children — who were persecuted by his group when he was still with them will be refused refugee status, under the restrictive interpretation."

Nobody seems quite able to put their finger on how the "non-state agent" provision became embedded in the jurisprudence of half a dozen countries. According to Ivor Jackson, a former UNHCR deputy director of international protection, it seems to

have crept in towards the end of the Cold War. "It's a problem derived from the fact that in the Cold War, persecution normally emanated from a state authority. People now argue that, at the time the Convention was framed, the type of persecution which existed came from the state. That's true. Nevertheless, the world has changed considerably since then. The Convention has been applied in all sorts of situations that didn't exist in 1951 — and it has been shown to work."

It was not until the collapse of the Iron Curtain that the full impact of the restrictive interpretation was really felt, as a result of a dramatic change in the profile of asylum-seekers. More and more asylum-seekers were fleeing civil wars, and fewer matched the classic profile of the individually persecuted political refugee crawling under the Curtain into the welcoming arms of the West. ►

Funeral of a young Algerian killed by gunmen in the village of Alt Said in Kabylie.



► The welcome rapidly wore thin, and the restrictive interpretation, which excluded all those persecuted by a non-state agent, was one way of cutting down the numbers.

Ivor Jackson, who joined UNHCR in 1958, is seen both inside and outside the organization as one of the foremost experts on the genesis and evolution of the 1951 Convention. In his view, refusal of refugee status on the grounds of non-state agents of persecution is "a vicious interpretation." Jackson has trawled through all the *travaux préparatoires* — or background working papers — which document the negotiations and proposals that took place prior to the acceptance of the final version of the 1951 Convention. "In the *travaux préparatoires*," he said, "there's nothing to support this interpretation. They never addressed their minds to the question whether persecution can only emanate from the state."

Outside of the legal departments of the countries which apply the restrictive interpretation, it has few supporters. Philip Rudge of ECRE said "There is a very broad consensus among NGOs in Europe that the issue is the persecution, and the

agent persecution in the case law of several countries. In others, administrative practice means that such refugees are usually given some sort of humanitarian status, even if they do not receive full Convention refugee status.

Even in the countries which are most loath to recognize non-state agents of persecution, potential victims of such persecution are often not actually deported — although sometimes this is simply due to the practical difficulties of deporting people to countries such as Liberia and Somalia.

While clearly preferable to deportation, an informal policy of non-deportation is still the weakest form of international protection there is. People in such a position remain cast in the role of illegal immigrants. In most countries, they have no status in society, no opportunity to earn a living legally, no recourse to authority, no legal protection. They know that if the powers-that-be suddenly decide "the boat is full," the policy of non-deportation could change overnight. They can be picked up by the police as an illegal immigrant at any time. Each morning they wake up with the sword of Damocles

consisting of parliamentarians and experts has been looking into Swedish refugee policy, which currently restricts recognition on grounds of persecution by non-state agents. In June, the Refugee Policy Commission published a series of proposals favoring a more liberal interpretation of the Convention, in particular on the issue of non-state agents of persecution. Under the proposals, victims of non-state agents would be included as 1951 Convention refugees. Most of the recommendations are expected to be adopted by the Swedish Parliament, leading to legislation that should come into force some time in 1996. According to John Horekens, Director of UNHCR's Europe bureau, "this is a welcome development which UNHCR follows with great interest. This could have a positive impact on the general discussion over the issue, particularly within the European Union."

UNHCR's position on the issue of non-state agents of persecution is crystal clear, and has been for years. Its 1979 Handbook on Procedures and Criteria for Determining Refugee Status is generally accepted as the main international guidelines for interpretation of the Convention, and in particular of the definition. In Paragraph 65 it states: "Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned... Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

A March 1995 UNHCR information note addressed to the member states of the European Union stated: "Persecution that does not involve state complicity is still, nonetheless, persecution." To someone unacquainted with the non-state issue, this might appear to be stating the obvious. UNHCR's bottom line on the Convention definition seems

The singular notion that states have a monopoly to be evil is outmoded.

agent of it is clearly secondary. We believe that the facts relating to the persecution are incomparably more important than the identity of the persecutor. The singular notion that states have a monopoly to be evil is outmoded."

The majority of European countries do not automatically exclude people with well-founded fear of persecution at the hands of non-state agents from being recognized as Convention refugees. Austria, Denmark, the Netherlands and Spain make no distinction between the state being unable or unwilling to provide protection, and there are examples of recognition of non-state-

hanging over their heads. The various humanitarian statuses applied by some European countries provide for better protection and social conditions. However, they too can be revoked at any time by the country concerned, for example in response to a sudden gust of political xenophobia. Only recognition under the 1951 Convention can remove such doubts and uncertainties, making a refugee's life — which is hard under any circumstances — a little more bearable.

In Sweden, a significant breakthrough on the non-state-agent issue may be in the making. A government-appointed commission



A Somali gunman in the streets of Mogadishu, September 1992.

equally obvious. The essential issue in establishing whether the 1951 Convention definition applies is to determine whether an applicant does or does not enjoy national protection against serious violation of his or her human rights, whoever the perpetrator of these violations may be.

For UNHCR, the proposed harmonization of the refugee definition by the E.U. member states goes right to the heart of its mandate. The 1951 Convention contains a provision that makes the High Commissioner responsible for supervising the application of the Convention. For this reason, the organization has strongly urged that any harmonization document include recognition of people persecuted by non-state agents—a category who are recognized as Convention refugees by many countries around the world. Although the majority of E.U. member

states also do in fact recognize non-state agents, adoption of a harmonization document requires unanimity—hence the fears of the lowest common denominator: it only requires one hard-line state to veto acceptance of non-state agents as valid persecutors.

If the final document harmonizing the E.U. position excludes persecution by non-state agents as valid grounds for granting refugee status, UNHCR believes it would contravene the spirit and purpose of the 1951 Convention, and have a negative impact on refugee protection worldwide. "For this reason," says McNamara, "we have made it clear that UNHCR cannot endorse any text that does not make recognition as a refugee under the 1951 Convention mandatory for this group."

RUPERT COLVILLE

Welcome to Limbo

Ba, a young law student from Abidjan University, arrived at Heathrow Airport in London at the end of August 1994, after a short stop-over in Paris. Immediately, he applied to British authorities for political asylum. Ba claimed that he had suffered repeated instances of police harassment in his country for belonging to an opposition party, the Ivoirian Popular Front, as well as to a trade union, the Côte d'Ivoire Student Federation. British airport police kept him in the transit zone, later to expel him to France, applying the concept of a "safe third country."

As soon as Ba arrived at Roissy Airport in Paris, he was arrested and taken to a transit zone. On October 15, he was sent back to London. Taken into custody as he disembarked, he only regained his freedom on 6 November, after an interview with an immigration official who at long last issued him a six-month residence permit. Ba could finally set foot on British soil.

In view of the unusual state of agitation
of this particular passenger,
the aircraft's captain refused to take off...

Not all asylum-seekers are so fortunate, as the misadventures of a Zairian woman and of a Sri Lankan Tamil in Paris demonstrate. Both were asylum-seekers represented by the French refugee advocacy group ANAFE, the National Association for the Defense of Foreigners at the Borders.

Muana was a nurse at the Mama Yemo hospital in Kinshasa. On 9 November 1994, she arrived in Paris on a regular Air France flight. Not-

withstanding what ANAFE said was a perfectly valid entry visa, the police considered Muana suspicious and led her to a waiting area. After various unsuccessful attempts, she managed to file her application for asylum with the French border police (Police de l'air et des frontières, or PAF) on 11 November. ANAFE said Muana explained in great detail that her parents were long-standing anti-régime militants in Zaire and she had followed in their footsteps.

On 16 November, according to ANAFE, the Direction des libertés publiques et des affaires judiciaires (DLPJ) of the French Interior Ministry ruled that her asylum request was "manifestly unfounded" since "the applicant filed her application two days after her arrival, prompted to do so by a fellow Zairian in the waiting zone."

On 21 November, her wrists and ankles bound and escorted by three policemen, Muana was invited to board a plane to Kinshasa. She refused. According to ANAFE, a police officer slapped her across the face. Amid protests from crew and passengers, the police escort disembarked Muana and other deportees and took them back to the airport transit zone. A two-day truce followed. Then, on 23 November, Muana was expelled to Cameroon — a country she had not, in fact, transited *en route* to France — although her expulsion ruling stated clearly that she was to be taken back to Zaire. Since her expulsion, there has been no further news from Muana, ANAFE says.

Wondered one ANAFE official, "Did the Interior Ministry choose to send Muana to Cameroon, rather than to Zaire, because there is only one weekly flight to her country — and



A Kurdish woman from Turkey is fingerprinted at police headquarters at Lecce, southern Italy.

another refusal to board the plane would have entailed her being set free, given that the 20-day legal deadline would have lapsed? Could the administration be sure that she would be well-received in Cameroon?"

Occasionally, expulsions turn into outright tragedies.

A.K., a Sri Lankan Tamil, left Colombo in mid-July 1991, according to ANAFE records. After stopovers in Dubai and in Italy, he finally landed at Charles de Gaulle airport in Paris on 9 August. As he had no entry visa, A.K. was immediately led to the waiting zone. But he managed to file an application for asylum.

A.K. received a swift reply by telex from the DLPJF: his application was denied. On 17 August, police attempted — in vain — to put him on a flight to Sri Lanka. In view of the unusual state of agitation of this particular passenger, the aircraft's captain refused to take off with A.K. on board. A.K. went back to detention. One week later, according to

ANAFE, stronger tactics were used to get him onto a Colombo-bound plane. A.K. was gagged. His hands were tied behind his back. Then, as a police investigation later established, A.K. suffered a heart attack and went into a coma. The Sri Lankan's dream of a new life in France came to a tragic end at Aulnay-sous-Bois, a hospital in the Paris suburbs, where he died shortly after admission.

Asylum-seekers trying to enter Europe are faced with ever more obstacles. As they confront one hurdle after another, their illusions vanish. Often, they get no further than a transit zone before they are expelled. Even the lucky ones — those who emerge from the transit zones — can look forward to a long process involving much more red tape.

Often, the hurdles arise as soon as asylum-seekers step off the plane, disembark in ports or reach international train stations. Frequently, asylum applicants are bounced back and forth from airport to airport ►

► Their universe may never reach beyond the transit zone — where they sometimes remain confined beyond legal time limits — before they are flown back to their country of origin. Occasionally, as in the well-publicized case of an Iranian asylum-seeker who settled down in Paris' Roissy Airport, they may even spend a number of years in transit limbo.

The airport transit zone, or waiting zone — the term varies according to the country — usually stretches from the runway to the first police border checkpoint. It can include one or several areas where asylum-seekers can be housed, often with hotel-style services. Although only a few sample airports are covered in this article, nearly every country has such zones, and the type of reception offered in them can vary widely.

In mid-June 1995, the Geneva Coordination for the Right to Asylum (CGDA) examined what it

can contact for help. "This encourages arbitrary situations," one CGDA official says, noting that his organization has addressed a petition to the General Council seeking improvements.

In Spain, new transit facilities were inaugurated at Madrid's Barajas International Airport in June 1995 at a ceremony attended by government officials and representatives of UNHCR. Henceforth, asylum-seekers awaiting admission or expulsion will be separated from other foreigners who have been refused entry. With a capacity for 22 persons, the new transit zone for asylum-seekers has a lounge and a room specially equipped for children. Only a few days after its inauguration, these facilities proved to be too small when 39 Turkish asylum-seekers arrived at once.

The situation is quite different in Belgium and in France, major

phone calls. Should their asylum request be denied, the center becomes a virtual detention facility, which they can leave only when they are finally expelled from Belgium.

Transit Center 127 Bis, also in Belgium, can hold a further 100 people. There, authorities detain rejected asylum-seekers who nonetheless stayed on illegally in Belgium — such as those whose asylum requests have been denied on the grounds that they appear manifestly unfounded. Recently, three additional centers for illegal aliens were inaugurated at Bruges, Huy and Merksplas. In principle, detention in these centers is limited to less than two months.

Those who successfully pass their preliminary interview are moved to the "Petit Château," a transit center in downtown Brussels, before being channeled to one of the 12 Red Cross centers scattered throughout Belgium. The "Petit Château" can accommodate up to 500 people and the Red Cross centers have a total capacity for 1,800.

According to Amnesty International, in May 1995 there were 78 transit zones in France — mostly in airports and ports, but also in international train stations. Three groups of aliens can be detained in such zones:

- Those who lack visas, guarantees of return and/or sufficient resources.
- Those who, according to the French Air and Border Police, represent a threat to national security, including people who have been previously banned from French soil or who have been issued an expulsion order.
- People listed in the European Union's computerized databank as a threat to the national security and international relations of a country that has signed the Schengen accords.

In France, detention in a transit center can last as long as it takes to determine whether an application for asylum is justified — or manifestly unfounded. The border police establish the initial file, which is trans-

The airport transit zone usually stretches from the runway to the first police checkpoint. It can include one or several areas where asylum-seekers can be housed, often with hotel-style services.

described as a set of Draconian measures taken against asylum-seekers at Geneva's Cointrin Airport. According to the CGDA, asylum-seekers have been expelled from Geneva before the Federal Refugee Office could rule on their cases — a violation of Swiss law. In other cases, the CGDA alleges, asylum-seekers have been expelled from Geneva before expiry of the legal term of detention in the transit zone. Recently, CGDA said, a Zairian national allegedly spent three weeks at the airport awaiting an administrative ruling on admission that never arrived.

The CGDA points out that, on their arrival in Geneva, most asylum applicants have scant information about the procedures they should follow and the organizations they

destinations for asylum-seekers. In Brussels, the Belgian Interior Ministry operates several centers, the best-known being Transit Center 127, in Zaventem International Airport. It can house up to 100 asylum-seekers who reach Belgium's borders by air or by land without a visa. Those whose applications have been deemed "manifestly unfounded" are also put up there. In theory, the asylum-seekers cannot stay there longer than two months, and must use this short reprieve to exercise their right of appeal. Some human rights organizations say the time period is too short to exhaust all channels of appeal.

Detainees in Transit Center 127 may be assisted by a lawyer, but they cannot receive any other visitors, nor can they make or receive

mitted to the Interior Ministry. Later, an official from Asylum Requests at Border Posts (DAF) — a department of the Foreign Affairs Ministry — interviews the applicant and assesses his or her case.

The Ministry of Foreign Affairs then issues a ruling, which is conveyed to the Interior Ministry for decision. Successful applicants may then leave the transit zone and set foot on French soil — carrying a safe-conduct permit with which to initiate the lengthy procedure that must be followed before refugee status can be granted.

If the ruling is negative, the rejected applicant remains in transit pending expulsion — a period that should last no longer than 20 days. Applicants should be informed of their rights and obligations and, if required, should receive the services of an interpreter. Detainees may communicate with their lawyers or with any other person, and are at liberty to leave France at any time.

A decree of 2 May 1995 governs access to French transit zones for UNHCR representatives and the staff of other humanitarian organizations. The UNHCR representative — and the staff he or she designates — may be issued individual authorizations to enter the zones, renewable after one year by the Minister of the Interior, after consultations with the Ministry of Foreign Affairs. The UNHCR representative may hold meetings with the heads of the administrative authorities in charge of border control, as well as with asylum-seekers detained in transit. These interviews can be private. The decree stipulates that UNHCR and the Interior Ministry jointly decide how frequently such visits take place — so as to permit "the effective exercise of the High Commissioner's duties with regard to refugees."

Organizations such as France Terre d'Asile, the French Bar Association, the League for Human Rights and Amnesty International are less privileged. Authorizations are only granted to five representatives per agency. Each may only visit the waiting zones once every three months.

They may conduct individual interviews with detainees, but they do so under the supervision of an officer of the border police. No more than one representative of an organization may enter the waiting zones on any given day.

ANAFE officials claim that by restricting the number of authorized persons to five per organization, the decree could end up transforming staff "into traveling salesmen who must criss-cross the whole of France to visit hundreds of transit zones."

At Geneva's Cointrin Airport, newly arrived asylum-seekers from Somalia get a free meal at an airport restaurant.



They say the restriction penalizes poorer organizations, which have fewer staff, and that it negates the spirit of the law and the parliamentary debates which preceded it when it was suggested that humanitarian agencies should be allowed a real presence in transit zones. Instead, they are simply given the right to carry out a quarterly observation visit.

An Amnesty International staffer adds that the decree "gives the right to an interview with the UNHCR representative only for those transit zone detainees who had requested admission as asylum-seekers. But foreigners sometimes find it difficult to express their request for asylum. Others may be trying to change their legal status. Any of them could benefit from contact with UNHCR."

FRANCIS KPATINDÉ

Trafficking in human lives

The grisly sight of 18 decomposing bodies found locked inside a refrigerated truck trailer in mid-July remains fresh in the mind of Ditlev Nordgaard. "It was a terrible tragedy," recalls Nordgaard, UNHCR deputy representative in Budapest. "You could hardly recognize the faces."

The 18 were all found suffocated in the trailer, which was locked from the outside. They were among 37 Sri Lankans — the other 19 were in another trailer — who paid \$800 each to a Bulgarian trucker to bring them to Germany and Italy, two of the more popular destinations in Western Europe for both illegal immigrants and asylum-seekers. Police say tragedy struck when the ventilation system broke down in one vehicle just after it set out from Bulgaria.

On the outskirts of Gyor, in western Hungary, the 19 passengers in the second truck trailer were told they were in Germany and were disembarked. When they found out that they were still in Hungary, they returned to the point of disembarkation to find police investigating the deaths of the 18 travelers inside the other locked trailer. Residents had called police, complaining of a bad smell and flies buzzing around the trailer.

The survivors later told Nordgaard that they were asylum-seekers from Sri Lanka, which has been torn apart by ethnic conflict. Some of them recounted that they had answered an advertisement in a newspaper in Colombo by an agency that specialized in arranging entry into Western Europe.

Most had sold all of their possessions in Sri Lanka just to pay for the trip. Many of them were taken to Moscow, where they spent from one to two years illegally working in bars and hotels. Saving more money, they moved on to Ukraine, then Moldova, finally ending up in Romania,

where the tragic truck journey to Germany was organized.

The 19 survivors applied for asylum in Hungary after the deaths in the trailer were discovered. They were interviewed to determine eligibility. Seven said they wanted to be sent home. All of the asylum applications were later rejected, including three cases that received careful extra scrutiny. In the end, all of them were sent back to Sri Lanka. The truck owner and drivers have in the meantime been arrested and are facing prosecution.

The incident in Hungary illustrates the risks that illegal aliens and asylum-seekers, particularly those from the Third World, are willing to take to flee their homelands. Their desire to escape either poverty or persecution has fueled a lucrative, if pernicious, trafficking in human lives. Countries in Western Europe

**The desire to escape
either poverty or
persecution has fueled
a lucrative, if
pernicious, trade.**

have been attempting to eliminate the practice. Their governments have tightened immigration laws, imposed stiff penalties on convicted human smugglers, and increased border patrols. Still, these efforts have not produced the desired results. It is practically impossible to control immense borders.

Because their paths often cross, the asylum-seekers and illegal immigrants often find the doors slammed in their faces. Asylum-seekers are often at a disadvantage.

"The possibilities for legal migration into Western Europe are extremely limited," said Katherine Cain, desk officer at UNHCR's Europe Bu-

reau. "There is practically no other way to get in. For many, the only recourse is to become an illegal." Cain said many economic migrants resort to claiming asylum to legitimize their stay, clogging up the system and making it difficult for bona fide asylum-seekers to gain recognition.

Walter Citti, the head of the Information Center for Immigrants in the Italian city of Trieste, cited Bosnians as an example. Italy treats refugees from the former Yugoslavia liberally, requiring only that they produce a letter of sponsorship by an Italian citizen.

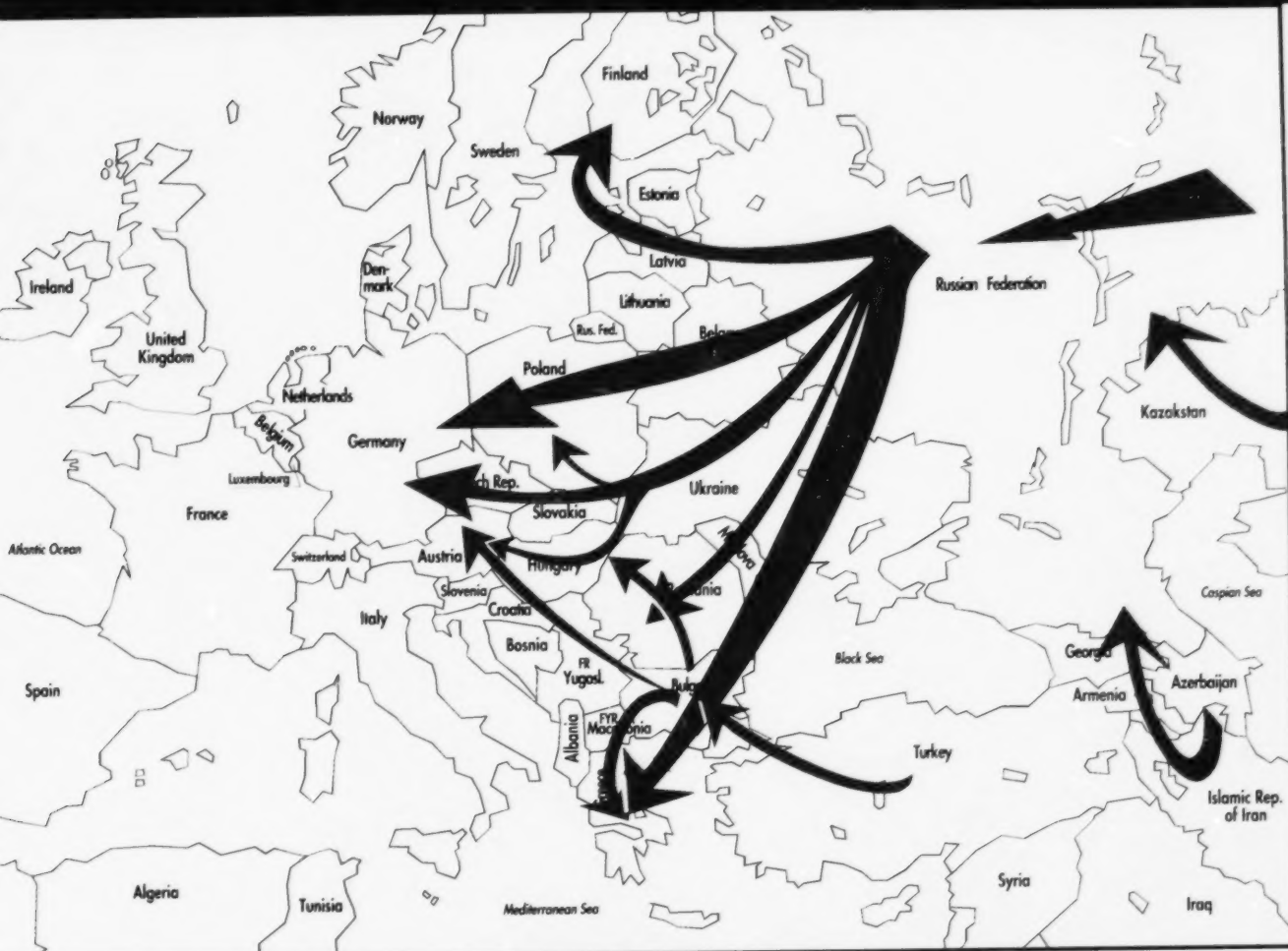
"Although at obvious risk, Bosnians are the ones who usually are refoiled at the border by police," Citti says. Bosnians often hastily leave their country and end up at the frontier without the required letter of sponsorship.

"Croats and Serbs are easily able to get sponsors in Italy because of the large Croat and Serb communities in Italy," says Citti. "The Italian Ministry of Interior has repeatedly reminded border police of the intent to accept people at risk from the former Yugoslavia. Every effort is made to implement this, but the problem is that we do not have enough trained people to do this," says Citti.

In general, Western Europe has been generous to UNHCR's appeal to keep doors open to persons fleeing the conflict in the former Yugoslavia.

Compounding the problems of asylum-seekers from ex-Yugoslavia are the large numbers of Albanians arriving in Italy — up to 100 per day. Most are peasants looking for jobs. Many present forged passports from the former Yugoslavia. The search for better opportunities by Albanians has led to exploitation by criminal gangs and Mafia-style syndicates.

Following a massive tide of Albanian arrivals in Italy and Greece



in 1991, UNHCR launched a mass information program broadcast on Radio Tirana aimed at convincing people to stay home. Each 30-minute program, broadcast twice, provides Albanians with basic information on travel, migration and asylum policies, human rights and discrimination.

Letters from listeners are read on the program, most of them seeking information on immigrant relatives. Accounts have also been aired of young women lured abroad by offers of jobs and later driven into prostitution. In addition, television documentaries are made and pamphlets on migration are distributed.

Giuseppe de Vincentis, of UNHCR's Mass Information Section, says a similar program is aired in the former Soviet Union by Radio Ostankino in Moscow. The program also covers such subjects as mass population displacements involving Russians and Third World peoples.

Many Third World asylum-seek-

ers, like the Sri Lankans who joined the ill-fated overland trip to Hungary in July, spend time in Russia. They then work their way to central Europe. Asians, Africans and East European illegal immigrants converge here looking for an opportunity to cross into the West.

Another major stepping stone to Europe is through the Baltic states (*see page 28*). On 1 August, a Norwegian freighter plucked 75 people, including men, women and children, from four rubber rafts floating in the Baltic Sea near the German island of Ruegen. Most were Afghans, except for four or five Sri Lankans. Days later, authorities were still trying to determine how they got to the region. The group was brought to the Danish port of Fredericia, where all applied for asylum.

Jacob Gammelgaard, of the Danish Refugee Council, noted that this was not the first such incident to occur in Denmark. "There is quite a

Smuggling routes through Central and Eastern Europe.

lot of human smuggling involved, but the extent this is used to gain entry into Denmark is not known," he said. Police normally are reticent on the subject in a bid to show they are in control, he added.

The increasing number of boat people reaching the Nordic countries has prompted governments to react. Denmark has raised the penalty for the smuggling of illegal immigrants to Denmark to two years imprisonment.

Naval patrols have been intensified and in some Nordic countries, orders have been issued for border authorities to return potential illegal entrants to the Baltic states. "The general tendency is the tightening of asylum policies," says Gammelgaard.

FERNANDO DEL MUNDO

The Baltic Connection

Despite the many dangers, smugglers have found no shortage of would-be migrants and asylum-seekers willing to pay \$1,000 each to take a rickety boat across the storm-tossed Baltic Sea in the dead of winter.

It's called the "Baltic Connection" and it ends — sometimes disastrously — with a perilous voyage between Latvia, Estonia or Lithuania, and the Nordic countries. Since 1992, authorities in the region have discovered at least 1,600 people in 23 separate incidents attempting to make the final leg of an often long and tortuous journey to Western Europe. How many fail to make it across the Baltic Sea is anyone's guess.

While there have been a few arrivals by air, most of those using the Baltic Connection do so by sea. One of the first recorded crossings by a group took place on 16 October 1992 and nearly ended in tragedy when a boat with 20 refugees ran aground on a rock off the coast of Sweden's major tourist island, Oland. Thirty-two hours earlier, the 10-meter pleasure craft — totally unsuited to the open sea — had left the Russian port of Kaliningrad. Soon after leaving port, the boat was caught in stormy weather, driving

rain and huge waves. Meager supplies of food and water soon ran out and, on the second night, the engine stopped and the boat was left adrift in the stormy sea.

After hitting the rock, the vessel gradually began filling with water. By the time the group was rescued by a fishing boat the next morning, the water had reached so high that the children aboard had to be held aloft.

Most of the arrivals use the Baltic countries merely as a transit zone, having already passed through Russia or Belarus. The majority are from Iraq: from the Kurdish areas, from Baghdad or from the southern marshes. Quite a few have also come from Afghanistan, Iranians, Tamils, Bengalis and some Palestinians and Pakistanis have also used the route. Some are single, but most are married couples with younger children.

For Iraqis, the smugglers' route normally takes them through Turkey and across the Black Sea.

The imposition of visa and other restrictions by West European governments — including the Nordic nations — and the collapse of the former Soviet Union and the general tightening of borders elsewhere, have funneled increasing numbers of people toward the Baltic states in the hopes that they can travel on

across the Baltic Sea to the Nordic countries and Western Europe. But the Baltic Connection would not exist if there weren't people willing to take the risk, nor smugglers preying on their desperation.

A foreigner entering any of the three Baltic countries without the necessary documents is by law defined as an illegal immigrant and is treated as such. In most cases, this means being placed in detention or facing the risk of being sent back to a country of previous transit, normally Russia or Belarus. Although Russia has often been reluctant to take them back, this has been a common practice between Lithuania and Belarus, in particular.

Most third-country migrants in the Baltic countries thus stay in hid-

The Baltic Connection would not exist
if there weren't people willing
to take the risk, nor smugglers preying
on their desperation.



ing while they await their chance to cross the Baltic Sea. Nobody knows how many of these people there are, nor how many of them may actually qualify as refugees. At any given time, estimates range from several hundred in transit, to a few thousand.

In Latvia, more than 100 asylum-seekers from the Middle East and Asia have been locked up in the Olaine detention center since the beginning of April after they were shuttled by train from one border to another, with no country willing to accept them. The majority of them are women and children and they are living in appalling conditions. There are no legal procedures in place to properly determine their status. In Estonia and Lithuania, the number of asylum-seekers in detention is currently very small.

In recent decades, migration to and from the Baltic countries has been very much a story of foreign oppression and occupation, and this

history is today reflected in public attitudes toward foreigners. During the Soviet era, the Baltic states were to a large extent colonized by hundreds of thousands of mostly Russian workers, civil servants, soldiers and their families. At the same time, many people from the Baltics were forced into exile in Siberia or other parts of the former Soviet Union, or escaped to other countries.

Very few of these "immigrants", except for the soldiers, have left after independence. Many have lived in the region for two generations, even though they do not speak the local language. Slightly more than 54 percent of Latvia's population today are ethnic Latvians, while just over 33 percent are Russians. For Estonia the equivalent figures are 61.5 percent and 30.3 percent. For Lithuania they are 81 percent and 8.4 percent. Thus, attitudes toward "outsiders" are often negative, and ethnic issues carry military and secu-

rity overtones — in Moscow as well as in the Baltic countries themselves.

One feature of the recent economic transition of the Baltic countries is that while a few people have become rich quickly, most of the population have yet to see their living conditions improve. For certain groups, especially for single mothers and elderly people, economic conditions have worsened and they live, by European standards, in poverty.

To accept refugees, to give them food and accommodation, is thus seen by many people in the Baltics as something they can ill afford. "We can't even manage to give our old-age pensioners a decent life, how can we afford to feed foreigners?" is a comment often heard. Others believe that anyone who can reach the Baltics from the Middle East, Asia or elsewhere must be rich and doesn't need help. Still others argue that foreigners contribute to growing crime rates and should therefore be placed in detention.

Some see a dilemma: one Latvian citizen put it like this: "Many are fighting for their freedom like we did and, therefore, we should help them. But how? They do not want to stay here, they want to go to Sweden or Canada."

Nordic governments and UNHCR's regional office in Stockholm have been trying to persuade — and assist — the Baltic states to take more responsibility for asylum-seekers and refugees. The immediate aim ►



Asylum-seekers from Iraq at Hardu Detention Center, Tallinn, Estonia.

► is to get all three states to ratify the 1951 Geneva Convention and to establish legal procedures for dealing with asylum-seekers. Other important goals are to establish selection procedures which identify genuine refugees and to ensure that they are properly received and treated. The Nordic countries and the International Organization for Migration (IOM)

returned. But attempts to do so have been made. Last spring, Swedish authorities put forward a couple of test cases, but the Swedish Appeals Board put a stop to it.

"It is premature," said UNHCR Regional Representative Hans Thoolen of the attempt to send people back. Thoolen is optimistic that in the foreseeable future legitimate refugees will receive the reception and treatment they deserve within the Baltic states themselves.

"For refugees, there should be no need to use the Baltic Connection since by that time they will be properly treated in the Baltic countries," Thoolen said. And after proper status determination, those who are not deemed refugees would be subject to deportation under national law. In this way the Baltic Connection may eventually also lose its allure for smugglers and economic migrants.

There are other incentives for establishing proper asylum policies in the Baltic states. All three countries are eager to become members of the European Union. Improved border controls and proper procedures will increase their chances of getting such membership, as well as visa-free regimes with their Nordic neighbors.

There is some cause for optimism. On 4 July, the Lithuanian Parliament became the first Baltic state to adopt a refugee law. This was seen as a major first step towards ratifying the 1951 Geneva Convention. Estonia and Latvia are expected to follow suit. In time, and with international help, there will be legal procedures and reception centers established for refugees and asylum-seekers in all the Baltic countries.

In the meantime, authorities on both sides of the Baltic Sea have stepped up coastal surveillance in a bid to sever the Baltic Connection. In response, smugglers have raised their prices and are even forcing clients to buy their own vessels, which are then abandoned offshore and left adrift. While there is some hope on the horizon, all too many people continue to risk their lives on the stormy seas of the Baltic.

ODD IGLEBAEK



Iranian asylum-seekers arriving at Slite, on the Swedish island of Gotland, in 1993.

have also been working on improved border controls.

From the perspective of the Nordic countries, it is crucial that the Baltic states become "safe countries of return," which would then minimize their attraction as a mere transit zone on the way to the West. Currently, Nordic countries see the Baltic Connection as a backdoor of unregulated immigration which needs to be closed.

Asylum-seekers who do manage to reach the Nordic countries via the Baltic states have so far not been

The State of the World's Refugees, 1995

In Search of Solutions

A report by UNHCR

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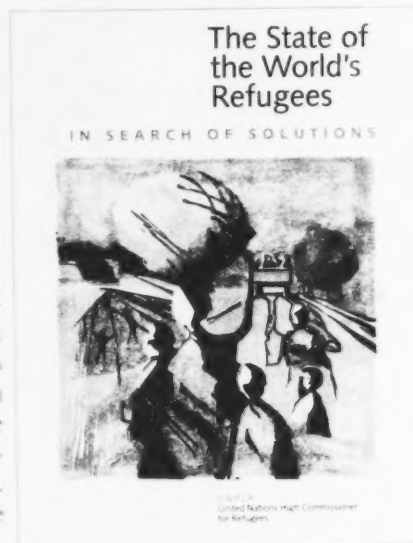
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Bosnia, Iraq, Liberia, Rwanda, Somalia, Tajikistan... During the past few years, the world has witnessed a succession of massive refugee movements and humanitarian emergencies. The number of people uprooted by persecution, war and communal conflict is now approaching 50 million — and is increasing every day. Humanitarian organizations are struggling to keep pace with the demands of each new refugee movement, while governments around the world are becoming increasingly reluctant to offer refuge to these victims of violence.

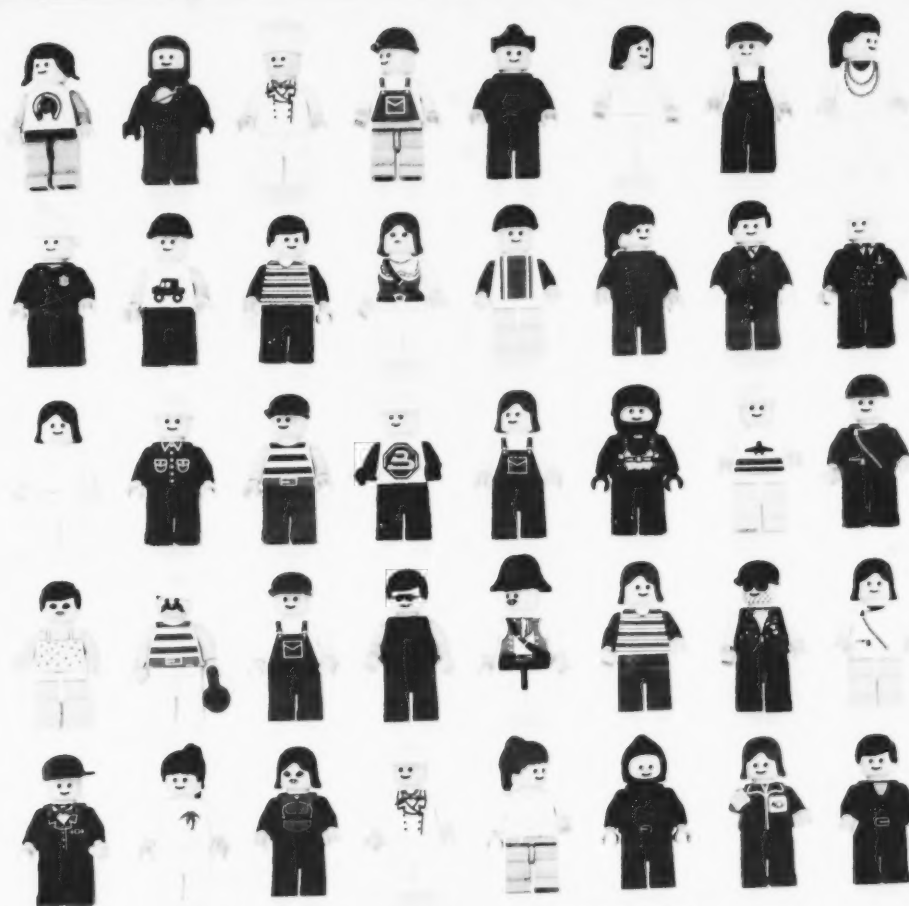
What can be done to resolve the global refugee problem? That is the question posed in this important report from UNHCR. The book examines the origins of the current crisis, and provides a wide-ranging analysis of the way in which approaches to the problem of human displacement have changed in recent years.

While the right of asylum must be scrupulously respected, the book argues, great-

er efforts must also be made to tackle refugee problems at their source, by restoring peace and prosperity to countries where large numbers of people have been forced to abandon their homes. And to achieve this objective,

concerted international action is required to protect human rights, to maintain peace and security, to promote sustainable development and to manage migratory movements.

As well as examining the linkages between these major international issues, this 265-page book includes a comprehensive set of statistical tables, graphs and maps, describing the state of the world's refugees. The book also presents more than 25 case studies, analyzing key refugee situations around the world and showing how new approaches to the problem of human displacement are being put into practice. *The State of the World's Refugees 1995* is an indispensable source of information and ideas on an issue which has risen to the very top of the international agenda.



SPOT THE REFUGEE

There he is. Fourth row, second from the left. The one with the moustache. Obvious really.

Maybe not. The unsavoury-looking character you're looking at is more likely to be your average neighbourhood slob with a grubby vest and a weekend's stubble on his chin.

And the real refugee could just as easily be the clean-cut fellow on his left.

You see, refugees are just like you and me.

Except for one thing.

Everything they once had has been left behind. Home, family,

possessions, all gone. They have nothing.

And nothing is all they'll ever have unless we all extend a helping hand.

We know you can't give them back the things that others have taken away.

We're not even asking for

money (though every penny certainly helps).

But we are asking that you keep an open mind. And a smile of welcome.

It may not seem much. But to a refugee it can mean everything.

UNHCR is a strictly humanitarian organization funded only by voluntary contributions. Currently it is responsible for more than 27 million people around the world.



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United Nations High Commissioner for Refugees

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